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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,200	04/16/2004	Kazumi Totaka	723-1505	7673
23117	7590	09/13/2007	EXAMINER	
NIXON & VANDERHYE, PC			TORIMIRO, ADETOKUNBO OLUSEGUN	
901 NORTH GLEBE ROAD, 11TH FLOOR			ART UNIT	PAPER NUMBER
ARLINGTON, VA 22203			3714	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/825,200	TOTAKA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Adetokunbo O. Torimiro	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 13 July 2007.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-3,5-10 and 12-16 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-3,5-10 and 12-16 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_\_

## DETAILED ACTION

1. The amendment received on 07/13/2007 has been considered. It has been noted that claims 1-3,5-9,10, and 14 have been amended. Claims 4 and 11 have been cancelled.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3,7-10, and 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crowley (US 6,096,962) in view of Koguchi (US 5,148,419) and Smith (US 2004/0017044).

Re claims 1,8, and 9: Crowley teaches a game apparatus operable to execute a game BGM / *background music* generating program stored on a storage medium (**see col.2, lines 30-40**), said game apparatus comprising a phrase data storage area that stores different kinds of a plurality of phrase data, based on a musical characteristics (**see fig.2B; col.2, lines 48-51 and col.2, line 64-col.3, line 11**); a rhythm-pattern storage area (320) that stores at least one kind of rhythm pattern data, constructed of rhythm, wherein said phrase data designate a length in performance for performing a phrase, and a timing of said phrase (**see fig.1; col.3, lines 12-20 and col.12, lines 40-43**); BGM data reproducing programmed logic circuitry that reproduces BGM data constructed of at least one part; sound outputting programmed logic circuitry (500) that outputs

a sound according to the BGM data reproduced by said BGM data reproducing programmed logic circuitry (see **fig.1B; col.2, lines 51-56**), wherein said game BGM generating program being executed by a processor (140) of said game apparatus to perform the steps of randomly selecting one kind of the phrase data from one group stored in said phrase data storage area (see **col.4, lines 5-9**); selecting one rhythm data from one kind of the rhythm pattern data stored in said rhythm-pattern storage area according to a predetermined rule (see **col.12, lines 57-60**); and generating the BGM data from the phrase data selected by said randomly selecting one kind of the phrase and the rhythm data selected by said selecting one kind of rhythm data (see **col.2, lines 30-40**).

However, Crowley fails to teach a tone-color-data storage area that stores data of the sound output according to said BGM data; a continuous counter for counting the number of times the same phrase has been selected; including incrementing said continuous counter when the phrase data selected last time and the phrase data selected this time agree and re-selecting the phrase data when a count value of said continuous counter is larger than a predetermined value.

Koguchi teaches a tone-color-data storage area that stores data of the sound output according to said BGM data (see **col.4, lines 65-68**).

Smith teaches a continuous counter for counting the number of times the same phrase / *correct answers* has been selected; including incrementing said continuous counter / *keeping scores* when the phrase data selected last time and the phrase data selected this time agree / *correct answers* and re-selecting the phrase data when a count value of said continuous counter is larger than a predetermined value (see **fig.1; par. [0020]**).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a tone-color-data storage area that stores data of the sound output according to said BGM data since tone and musical sound data of Koguchi and the incrementing of continuous counter upon selecting phrase data of Smith into the BGM generating program of Crowley. One would be motivated to do this so as to have a complete sound database and a system whereby there is a count of the amount of data selected from the database. **It is apparent to examiner that incrementing the score of a player doing a game is incrementing a continuous counter because the score of a game is a continuous counter, where selecting the correct answer is the phrase data in the teaching of Smith.**

Re claim 2: Crowley teaches a storage medium that stores a game BGM / *background music* generating program (see col.2, lines 30-40), wherein said selecting one kind of rhythm includes randomly selecting the rhythm data from one kind of said rhythm pattern data (see col.12, lines 40-43 and lines 57-60).

Re claim 3: Crowley teaches a storage medium that stores a game BGM generating program, wherein said rhythm selecting step includes sequentially selecting the rhythm data from one kind of said rhythm pattern data in predetermined order (see col.12, lines 57-60).

Re claim 7: Crowley teaches a storage medium that stores a game BGM generating program, wherein said game apparatus further comprises a period designating data storage area that stores period designating data that designates a performing period / *play mode* and a

performance suspended period / *don't play mode* of the phrase, said BGM data reproducing programmed logic circuitry suspends a reproduction of the BGM data in the performance suspended period based on said period designating data (see **fig.3; col.4, lines 39-47 and col.8, lines 39-42**), and allows said processor to execute the step of counting the performing period and the performance suspended period designated by said period designating data by the number of times the rhythm data has been selected (see **fig.3; col.9, lines 8-28**). **It is apparent to examiner that since there is a play mode present, there will be a mode also present for the don't play mode.**

Re claim 10: Crowley teaches a method for generating a sequence of BGM, comprising the steps of: providing at least one set of rhythm data (see **fig.1; col.3, lines 12-20 and col.12, lines 40-43**), providing at least one set of phase data (see **fig.2B; col.2, lines 48-51 and col.2, line 64-col.3, line 11**), selecting a set of rhythm data from the at least one set of rhythm data (see **col.12, lines 40-43 and lines 57-60**), selecting a set of phase data from the at least one set of phase data (see **col.4, lines 5-9**), and generating BGM data from the selected rhythm data and the selected phase data (see **col.2, lines 30-40**).

However, Crowley fails to teach a continuous counter for counting the number of times the same phrase has been selected; including incrementing said continuous counter when the phrase data selected last time and the phrase data selected this time agree and re-selecting the phrase data when a count value of said continuous counter is larger than a predetermined value.

Smith teaches a continuous counter for counting the number of times the same phrase / *correct answers* has been selected; including incrementing said continuous counter / *keeping*

*scores* when the phrase data selected last time and the phrase data selected this time agree / *correct answers* and re-selecting the phrase data when a count value of said continuous counter is larger than a predetermined value (see fig.1; par. [0020]).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the incrementing of continuous counter upon selecting phrase data of Smith into the BGM generating program of Crowley. One would be motivated to do this so has to have a complete sound database and a system whereby there is a count of the amount of data selected from the database. **It is apparent to examiner that incrementing the score of a player doing a game is incrementing a continuous counter because the score of a game is a continuous counter, where selecting the correct answer is the phrase data in the teaching of Smith.**

Re claims 12 and 13: Crowley teaches the method wherein the selecting a set of rhythm data includes randomly selecting a set of rhythm data; and wherein the selecting a set of rhythm data includes sequentially selecting a set of rhythm data (see col.12, lines 40-43 and lines 57-60).

Re claims 14-16: Crowley teaches the method wherein the selecting a set of phase data includes randomly selecting a set of phase data (see col.3, lines 12-20); wherein the selecting a one rhythm data includes randomly selecting a rhythm data; and wherein the selecting a one rhythm data includes sequentially selecting a rhythm data (see col.12, lines 57-60).

4. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crowley (US 6,096,962) in view of Koguchi (US 5,148,419) and Smith (US 2004/0017044) and further in view of Ishikawa et al (US 2001/0016510). The teachings of Crowley, Koguchi, and Smith have been discussed above.

Re claim 5: Crowley teaches a storage medium that stores a game BGM generating program.

However, Crowley fails to teach a storage medium that stores a game BGM generating program wherein said game apparatus further comprises at least one operating control that inputs an operation from a player; and performance change data storage area that stores performance change data that changes a performing method of a BGM and further is used by said processor in execution of the following steps, of storing performance change data corresponding to at least the operation of said performance change data storage area; and applying a predetermined change to said BGM data corresponding to the performance change data stored in said performance change data storage area by said storing performance change data.

Ishikawa et al teaches a storage medium that stores a game BGM generating program (see par. [0002]) wherein said game apparatus further comprises at least one operating control (32) that inputs an operation from a player (see fig.1; par. [0011], lines 1-3); and performance change data storage area that stores performance change data that changes a performing method of a BGM and further is used by said processor in execution of the following steps, of storing performance change data corresponding to at least the operation of said performance change data storage area; and applying a predetermined change to said BGM data corresponding to the

performance change data stored in said performance change data storage area by said storing performance change data (see par. [0012]).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to include an operating control for inputting operations and performance change data storage in the BGM generating program since games that utilizes BGM requires input from players in order for there to be change in the performance and hence performance change data and a storage area to store the performance change data so has to allow storage of performance change data, thereby making the game more interesting by allowing player input.

Re claim 6: Crowley teaches a storage medium that stores a game BGM generating program.

However, Crowley fails to teach a storage medium that stores a game BGM generating program wherein applying a predetermined change includes changing a tempo of said BGM data according to said performance change data.

Ishikawa et al teaches a storage medium that stores a game BGM generating program wherein applying a predetermined change includes changing a tempo of said BGM data according to said performance change data (see par. [0017], lines 1-5]).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a change in tempo of the BGM which a performance change data so as to increase the level of interaction between the player and the game thereby making the game more interesting and enjoyable for the player.

***Response to Arguments***

5. The Applicants correction in regards to the Drawings and Specification is accepted therefore, that objection has been withdrawn.

Applicant's arguments with respect to claims 1-3,5-10, and 12-16 have been considered but are moot in view of the new grounds of rejection.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ichikawa discloses a method of and apparatus for composing a melody by switching musical phrases, and program storage medium readable by the apparatus for composing a melody; Kurakake et al discloses an apparatus and method for automatically generating musical composition data for use on portable terminal.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adetokunbo O. Torimiro whose telephone number is (571) 270-1345. The examiner can normally be reached on Mon-Fri (8am - 4pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

AT



ROBERT E. PEZZUTO  
SUPERVISORY PRIMARY EXAMINER